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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,156	01/24/2002	Joseph Melekian	60130-1314/02MRA0041	9473

26096 7590 10/31/2003

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EXAMINER

SICONOLFI, ROBERT

ART UNIT	PAPER NUMBER
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3683

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 10/056,156
Filing Date: January 24, 2002
Appellant(s): MELEKIAN, JOSEPH

David L. Wisz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/1/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-13 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2,875,859	Strebinger	3-1959
3,862,675	Blatter et al	1-1975

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3,5-7, and 9-13 are rejected under 35 U.S.C. 102. This rejection is set forth in prior Office Action, Paper No. 8.

(11) Response to Argument

Appellant argues that Blatter et al does not disclose an unobstructed moisture escape path. The examiner disagrees. The claim language reads "brake lining drain openings aligned with ...brake shoe table drain openings to provide an unobstructed moisture escape path" (claim 1 with similar language in claims 5). The examiner interprets this to mean that moisture should be able to flow through the brake shoe table and brake shoe lining. There is nothing in the claims that requires the moisture to flow unobstructed once it leaves the brake shoe table or brake shoe lining. Therefore, Blatter et al provides an unobstructed moisture escape path *through* the brake shoe table and brake shoe lining and thus meets the limitations of the claim.

Appellant further argues that the fluid of Blatter et al does not constitute moisture. The examiner disagrees. The term moisture refers to a small quantity of fluid (Source: Webster's Revised Unabridged Dictionary, © 1996,1998). It does not refer to a specific liquid. Appellant further argues that Blatter et al argues against moisture but fails to cite where in the patent specification this appears. The examiner notes that the word

moisture is not used in the Blatter et al reference. Further, the examiner would like to note that the presence of moisture is not required by the claim language but merely a path for it to escape through.

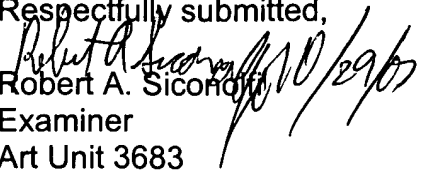
Appellant further argues that the fact the examiner did not reject claims 10-13 as proof that the examiner's interpretation is incorrect. The examiner disagrees. The cited claims add additional limitations not present in the independent claims. These additional limitations change the scope of the "broadest reasonable interpretation" that the examiner can apply. Furthermore, if the claims present no true additional limitations (which is what the Appellant appears to be arguing), then the claims would be objected to on the basis of not further limiting the parent claim (37 CFR 1.75(c)).

Appellant argues that Strebinger does not disclose any *apertures* through the brake lining. As the examiner has stated previously to Appellant, the word aperture does not appear in the claims. Therefore, whether or not Strebinger discloses such an aperture or not is irrelevant. Strebinger does, however, disclose apertures contrary to the assertions of the Appellant. An aperture is defined as an opening (which is the term used in the claims). The examiner would like to note figures 5 and 6 of Strebinger which shows brake shoe table 20a with holes 30 and brake shoe lining 24a which is formed in multiple segments with openings between the segments. Independent claims 1,5, and 13 do not require any specific shape of the openings or a continuous brake shoe lining. The claims merely require the brake lining to "define" a brake lining opening which the segments 24a of Strebinger does.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Robert A. Siconolfi

Examiner

Art Unit 3683

RS

October 17, 2003

Conferees

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